

Assembly Bill No. 478

Passed the Assembly September 7, 2005

Chief Clerk of the Assembly

Passed the Senate September 6, 2005

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2005, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 3419, 3423, and 6030 of, and to add Sections 3424 and 5007.7 to, the Penal Code, and to amend Sections 222 and 1774 of the Welfare and Institutions Code, relating to inmates.

LEGISLATIVE COUNSEL'S DIGEST

AB 478, Lieber. Female inmates and wards.

(1) Existing law provides that an inmate who gives birth after her receipt by the Department of Corrections and Rehabilitation may be declared eligible to participate in a community treatment program that provides for the release of the mother and child to a public or private facility in the community suitable to their needs.

This bill would require any community treatment program in which such an inmate participates to include prenatal care, access to prenatal vitamins, childbirth education, and infant care. This bill would also require the department to establish minimum standards for pregnant inmates who are not eligible for the program including necessary nutrition and vitamins, information and education, and a dental cleaning.

(2) Existing law provides that any inmate who gives birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for childbirth.

This bill would provide that pregnant inmates taken to a hospital outside the prison shall be transported in the least restrictive way possible. This bill would also provide that the inmate shall not be shackled by the wrists, ankles, or both during labor, including during transport to the hospital, during delivery, and while in recovery after giving birth, except as specified.

(3) Existing law requires the Corrections Standards Authority to establish minimum standards for state and local correctional facilities, as specified.

This bill would provide that those standards shall require that inmates who are received by the facility while they are pregnant are provided, at a minimum, necessary nutrition and vitamins, information and education, and a dental cleaning. This bill would also require that these standards provide that at no time shall a woman who is in labor be shackled by the wrists, ankles, or both,

including during transport to the hospital, during delivery, and while in recovery after giving birth, except as specified.

(4) Existing law entitles any female in the custody of a local juvenile facility or the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, the right to summon and receive the services of any physician and surgeon of her choice to determine if she is pregnant, and to a determination of the medical services needed with regard to the pregnancy.

This bill would provide that a ward who gives birth while under the jurisdiction of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or a community treatment program, has the right to prenatal care, prenatal vitamins, and childbirth education. The bill would apply the requirements outlined in (2) above to pregnant wards under the jurisdiction of local or state correctional facilities.

(5) Because this bill would require local officials to provide additional services, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 3419 of the Penal Code is amended to read:

3419. (a) In the case of any inmate who gives birth after her receipt by the Department of Corrections and Rehabilitation, the department shall, subject to reasonable rules and regulations promulgated pursuant to Section 3414, provide notice of, and a written application for, the program described in this chapter, and upon her request, declare the inmate eligible to participate in a program pursuant to this chapter if all of the requirements of Section 3417 are met.

(b) The notice provided by the department shall contain, but need not be limited to, guidelines for qualification for, and the timeframe for application to, the program and the process for appealing a denial of admittance.

(c) Any community treatment program, in which an inmate who gives birth after her receipt by the Department of Corrections and Rehabilitation participates, shall include, but is not limited to, the following:

- (1) Prenatal care.
- (2) Access to prenatal vitamins.
- (3) Childbirth education.
- (4) Infant care.

SEC. 2. Section 3423 of the Penal Code is amended to read:

3423. Any woman inmate who would give birth to a child during her term of imprisonment may be temporarily taken to a hospital outside the prison for the purposes of childbirth, and the charge for hospital and medical care shall be charged against the funds allocated to the institution. The inmate shall not be shackled by the wrists, ankles, or both during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, except as provided in Section 5007.7. The board shall provide for the care of any children so born and shall pay for their care until suitably placed, including, but not limited to, placement in a community treatment program.

SEC. 3. Section 3424 is added to the Penal Code, to read:

3424. A woman who is pregnant during her incarceration and who is not eligible for the program described in this chapter shall have access to complete prenatal health care. The department shall establish minimum standards for pregnant inmates in its custody who are not placed in a community treatment program including all of the following:

- (a) A balanced, nutritious diet approved by a doctor.
- (b) Prenatal and postpartum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.
- (c) Information pertaining to childbirth education and infant care.
- (d) A dental cleaning while in a state facility.

SEC. 4. Section 5007.7 is added to the Penal Code, to read:

5007.7. Pregnant inmates temporarily taken to a hospital outside the prison for the purposes of childbirth shall be transported in the least restrictive way possible, consistent with the legitimate security needs of each inmate. Upon arrival at the hospital, once the inmate has been declared by the attending physician to be in active labor, the inmate shall not be shackled by the wrists, ankles, or both, unless deemed necessary for the safety and security of the inmate, the staff, and the public.

SEC. 5. Section 6030 of the Penal Code is amended to read:

6030. (a) The Corrections Standards Authority shall establish minimum standards for state and local correctional facilities. The standards for state correctional facilities shall be established by January 1, 2007. The authority shall review those standards biennially and make any appropriate revisions.

(b) The standards shall include, but not be limited to, the following: health and sanitary conditions, fire and life safety, security, rehabilitation programs, recreation, treatment of persons confined in state and local correctional facilities, and personnel training.

(c) The standards shall require that at least one person on duty at the facility is knowledgeable in the area of fire and life safety procedures.

(d) The standards shall also include requirements relating to the acquisition, storage, labeling, packaging, and dispensing of drugs.

(e) The standards shall require that inmates who are received by the facility while they are pregnant are provided all of the following:

(1) A balanced, nutritious diet approved by a doctor.

(2) Prenatal and postpartum information and health care, including, but not limited to, access to necessary vitamins as recommended by a doctor.

(3) Information pertaining to childbirth education and infant care.

(4) A dental cleaning while in a state facility.

(f) The standards shall provide that at no time shall a woman who is in labor be shackled by the wrists, ankles, or both including during transport to a hospital, during delivery, and while in recovery after giving birth, except as provided in Section 5007.7.

(g) In establishing minimum standards, the authority shall seek the advice of the following:

(1) For health and sanitary conditions:

The State Department of Health Services, physicians, psychiatrists, local public health officials, and other interested persons.

(2) For fire and life safety:

The State Fire Marshal, local fire officials, and other interested persons.

(3) For security, rehabilitation programs, recreation, and treatment of persons confined in correctional facilities:

The Department of Corrections and Rehabilitation, state and local juvenile justice commissions, state and local correctional officials, experts in criminology and penology, and other interested persons.

(4) For personnel training:

The Commission on Peace Officer Standards and Training, psychiatrists, experts in criminology and penology, the Department of Corrections and Rehabilitation, state and local correctional officials, and other interested persons.

(5) For female inmates and pregnant inmates in local adult and juvenile facilities:

The California State Sheriffs' Association and Chief Probation Officers' Association of California, and other interested persons.

SEC. 6. Section 222 of the Welfare and Institutions Code is amended to read:

222. (a) Any female in the custody of a local juvenile facility shall have the right to summon and receive the services of any physician and surgeon of her choice in order to determine whether she is pregnant. If she is found to be pregnant, she is entitled to a determination of the extent of the medical services needed by her and to the receipt of those services from the physician and surgeon of her choice. Any expenses occasioned by the services of a physician and surgeon whose services are not provided by the facility shall be borne by the female.

(b) A ward shall not be shackled by the wrists, ankles, or both during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, subject to the security needs described in this section. Pregnant wards temporarily taken to a hospital outside the facility for the

purposes of childbirth shall be transported in the least restrictive way possible, consistent with the legitimate security needs of each ward. Upon arrival at the hospital, once the ward has been declared by the attending physician to be in active labor, the ward shall not be shackled by the wrists, ankles, or both, unless deemed necessary for the safety and security of the ward, the staff, and the public.

(c) For purposes of this section, “local juvenile facility” means any city, county, or regional facility used for the confinement of juveniles for more than 24 hours.

(d) The rights provided to females by this section shall be posted in at least one conspicuous place to which all female wards have access.

SEC. 7. Section 1774 of the Welfare and Institutions Code is amended to read:

1774. (a) Any female who has been committed to the authority shall have the right to summon and receive the services of any physician and surgeon of her choice in order to determine whether she is pregnant. The director may adopt reasonable rules and regulations with regard to the conduct of examinations to effectuate that determination.

(b) If she is found to be pregnant, she is entitled to a determination of the extent of the medical services needed by her and to the receipt of those services from the physician and surgeon of her choice. Any expenses occasioned by the services of a physician and surgeon whose services are not provided by the facility shall be borne by the female.

(c) A ward who gives birth while under the jurisdiction of the Department of Corrections and Rehabilitation, Division of Juvenile Facilities, or a community treatment program has the right to the following services:

- (1) Prenatal care.
- (2) Access to prenatal vitamins.
- (3) Childbirth education.

(d) A ward shall not be shackled by the wrists, ankles, or both during labor, including during transport to a hospital, during delivery, and while in recovery after giving birth, subject to the security needs described in this section. Pregnant wards temporarily taken to a hospital outside the facility for the purposes of childbirth shall be transported in the least restrictive

way possible, consistent with the legitimate security needs of each ward. Upon arrival at the hospital, once the ward has been declared by the attending physician to be in active labor, the ward shall not be shackled by the wrists, ankles, or both, unless deemed necessary for the safety and security of the ward, the staff, and the public.

(e) Any physician providing services pursuant to this section shall possess a current, valid, and unrevoked certificate to engage in the practice of medicine issued pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code.

(f) The rights provided to females by this section shall be posted in at least one conspicuous place to which all female wards have access.

SEC. 8. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

Approved _____, 2005

Governor